detracted from the powers of the Lieutenant-Governor as given by the British North America Act (30 VICT., c. 3, §§ 54, 56, 90). Provision is made by § 92 (1) of the latter act: "In each Province, the Legislature may exclusively make laws in relation to . . . the amendment, from time to time . . . of the Constitution of the Province, except as regards the office of Lieutenant-Governor." *Held*, that the Manitoba act is *ultra vires*. *In re the Initiative and Referendum Act*, [1919] A. C. 935 (Privy Council).

In the United States, it would seem that provision for the initiative and referendum may not be made by state statute, due to the constitutional principle that legislative power is delegated by the people to a definite legislative body, which cannot in turn pass its powers on. *Ex parte Wall*, 48 Cal. 279, 315; *C. W. & Z. R. R.* v. *Clinton County*, 1 Ohio St., 77, 87. See 16 HARV. L. REV. 218. Such legislative device may be secured, however, through constitutional provision or amendment, and does not contravene the Federal Constitution, which guarantees to the states a republican form of government. *Kadderly* v. *Portland*, 44 Ore. 118, 74 Pac. 710; *State* v. *Hutchinson*, 93 Kan. 405, 144 Pac. 241. See 24 HARV. L. REV. 141. In Canada the British North America Act constitutes the fundamental law, and is the charter by which the rights of the dominion and provincial governments are to be determined. *Mercer* v. *Attorney-General*, 5 Can. S. C. 538, 675. Within the limits prescribed by § 92 of that act, the provincial legislatures are deemed to have plenary authority — are not considered mere delegates of the Imperial Parliament. See LEFROY, CANADA'S FEDERAL SYSTEM, 64. Accordingly, they may seek the assistance of subordinate agencies for the enactment of local regulations, such as the licensing and control of taverns. *Hodge* v. *The Queen*, L. R. 9 A. C. 117, 132. And they may legislate conditionally; for example, by prescribing that an act shall come into operation only on the petition of a majority of electors. *Russell* v. *The Queen*, L. R. 7 A. C. 829, 835. It has also been suggested that, not being themselves delegates, they may endow a new and different legislative body with their powers. See LEFROY, CONSTITUTIONAL LAW OF CANADA, 69; CANADA'S FEDERAL SYSTEM, 65, 69. This problem was adverted to in the principal case, but no opinion was expressed, the court considering that the case was concluded on the short ground that the provincial legislature had, in taking from the powers of the Lieutenant-Governor, exceeded an express limitation.

CONSTITUTIONAL LAW — POWERS OF LEGISLATURE: THE WAR POWER — WAR-TIME PROHIBITION. — On November 21, 1918, after the armistice with Germany had been signed, the War-Time Prohibition Act was approved, the act providing that after June 30, 1918, until the conclusion of the war and the termination of demobilization, the date to be proclaimed by the President, it should be unlawful to sell for beverage purposes any distilled spirits. Injunctions were asked against internal revenue collectors to restrain them from taking steps under the act. *Held*, that the act is constitutional. *Hamilton* v. *Kentucky Distilleries and Warehouse Co.; Dryfoos et al.* v. *Edwards*, U. S. Sup. Ct., Nos. 589 and 602, October Term, 1919.

On October 28, 1919, the Volstead Act was passed over the President's veto, providing that the words "beer, wine, or other intoxicating malt or vinous liquors" in the War-Time Prohibition Act should be construed to mean any liquors which contain in excess of one half of one per cent alcohol. Suit was brought to restrain the enforcement of the act. *Held*, that the act is constitutional. McReynolds, Day, Van Devanter, and Clarke, JJ., dissenting. *Ruppert* v. *Caffey*, U. S. Sup. Ct., No. 603, October Term, 1919.

For a discussion of these cases, see NOTES, p. 585, *supra*.

CONTRACTS — CONSTRUCTION — DURATION OF A CONTRACT IN THE ABSENCE OF A SPECIFIED TIME LIMIT. — The plaintiff, a liquor dealer, in sub-

scribing to stock in the defendant company contracted also to purchase from defendant "10 barrels of beer per week aggregating 520 barrels per year." No time was expressed limiting the duration of this contract. The plaintiff complied with it for three years and then refused to take any more beer, although he remained in the liquor business for four years thereafter. In a suit by the plaintiff for unpaid dividends on his stock the defendant claimed by way of set-off the damages resulting from the plaintiff's alleged breach of contract. *Held*, that the defendant recover. *Nolle* v. *Mutual Union Brewing Co.*, 108 Atl. 23 (Pa.).

Often the duration of a contract, though not specified, is implied in fact. *Pfiester* v. *Western Union Tel. Co.*, 282 Ill. 69, 118 N. E. 407. But how construe a contract wherein the parties neither expressly nor by implication of fact indicate their intent concerning its duration? It has been held that such contracts are terminable at will. *Barney* v. *Indiana Ry. Co.*, 157 Ind. 228, 61 N. E. 194; *Victoria Limestone Co.* v. *Hinton*, 156 Ky. 674, 161 S. W. 1109. This construction makes the mutual promises illusory and denies the existence of a bilateral contract, which is contrary to the business intent of parties entering into a bargain. The law, moreover, favors a construction of validity where not incompatible with the language of the contract. See *Hobbs* v. *McLean*, 117 U. S. 567, 576. We find also authority for the proposition that such contracts are presumptively of perpetual duration. *McKell* v. *Chesapeake R. Co.*, 175 Fed. 321. See *Western Union Tel. Co.* v. *Penna. Co.*, 129 Fed. 849, 861. In the vast majority of cases, however, perpetual obligation is not contemplated by the parties. A construction, moreover, imposing such obligation should, where possible, be avoided. *Texas & Pac. Ry. Co.* v. *City of Marshall*, 136 U. S. 393; *Maccalum Printing Co.* v. *Graphite Compendius Co.*, 150 Mo. App. 383, 130 S. W. 836. A third construction taken makes such contracts terminable by either party upon reasonable notice. *Stonega Coke & Coal Co.* v. *L. & N. Ry. Co.*, 106 Va. 223, 55 S. E. 551; *Dunham* v. *Orange Lumber Co.*, 59 Tex. Civ. App. 268, 125 S. W. 89. While this view probably accords with custom in contracts of employment, it is doubtful whether in contracts involving subject matter of a different type "terminable upon reasonable notice" is much better than "terminable at will." It is suggested that these contracts should be construed to extend over a reasonable period of time, considering the subject matter of the agreement and the situation of the parties at the time it was made. The principal case, while purporting to imply in fact a limit of time from the surrounding circumstances, is in effect adopting the last construction. *Cf. Suburban R. T. St. Ry. Co.* v. *Monongahela Natural Gas Co.*, 230 Pa. 109, 79 Atl. 252.

CRIMINAL LAW — SELF-DEFENSE — BURDEN OF PROOF. — Under a plea of not guilty to an indictment charging murder, the defendant admitted killing the deceased but claimed self-defense as a justification. *Held*, that the burden of establishing self-defense by a preponderance of evidence was upon the accused. *State* v. *Mellow*, 107 Atl. 871 (R. I.).

It is a general principle of criminal law that the burden of proving the guilt of a defendant beyond a reasonable doubt is always upon the prosecution. The absence of affirmative pleadings in criminal actions and the policy of the law to use the utmost precaution to prevent injustice to the accused seem to be the reasons for this doctrine. See 4 WIGMORE, EVIDENCE, § 2512. When self-defense is the justification offered under a plea of not guilty to a charge of murder, the great weight of authority follows the above rule. *People* v. *Downs*, 123 N. Y. 558, 25 N. E. 988; *Gravely* v. *State*, 38 Neb. 871, 57 N. W. 751. On the other hand, a few courts go to the other extreme by holding that self-defense must be established by the defendant to the satisfaction of the jury. *State* v. *Byers*, 100 N. C. 512, 6 S. E. 420; *State*, v. *Honey*, 65 Atl. 764. (Del.)